

Chapter 30B.53 RCW
STATE TRUST COMPANIES—MERGER, CONSOLIDATION, AND CONVERSION

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RCW 30B.53.002 Applicability of chapter. This chapter applies to any merger or change of control in which a state trust company is a party. [2019 c 389 § 92; 2014 c 37 § 387.]

RCW 30B.53.005 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Acquiring person" means a person acquiring or seeking to acquire control of a state trust company, directly or indirectly.

(2) "Control," "controls," "controlled," and "controlling" mean:

(a) The ownership of or ability or power to vote, directly, acting through one or more other persons, or otherwise indirectly, twenty-five percent or more of the outstanding shares of a class of voting securities of a state trust company or other company;

(b) The ability to control the election of a majority of the board of a state trust company or other company;

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the state trust company or other company as determined by the director after notice and an opportunity for hearing; or

(d) The conditioning of the transfer of twenty-five percent or more of the outstanding shares or participation shares of a class of voting securities of a state trust company on the transfer of twenty-five percent or more of the outstanding shares of a class of voting securities of another state trust company or other company.

(3) "Merger" includes consolidation.

(4) "Merging trust company" means a party to a merger.

(5) "Resulting trust company" means the trust company resulting from a merger. [2019 c 389 § 93; 2014 c 37 § 388.]

RCW 30B.53.010 Approval by director—Required. Upon approval by the director consistent with this chapter, merging trust companies, one of which is a state trust company, may be merged to result in a resulting trust company. [2019 c 389 § 96; 2014 c 37 § 389.]

RCW 30B.53.020 Contents of merger agreement—Approval by each board of directors—Requirements for director's approval. (1) The board of directors of each merging trust company shall, by a majority of the entire board, approve a merger agreement that must contain:

(a) The name of each merging trust company and location of each office;

(b) With respect to the resulting trust company, (i) the name and location of the principal and other offices; (ii) the name and mailing address of each director to serve until the next annual meeting of the shareholders; (iii) the name and mailing address of each officer; (iv) the amount of capital, the number of shares, and the par value, if any, of each share; and (v) the amendments to its charters and bylaws;

(c) Provisions governing the exchange of shares of the merging trust companies for such consideration as has been agreed to in the merger agreement;

(d) A statement that the agreement is subject to approval by the director and the shareholders of each merging trust company;

(e) Provisions governing the manner of disposing of the shares of the resulting trust company if the shares are to be issued in the transaction and are not taken by dissenting shareholders of merging trust companies; and

(f) Any other provisions the director requires to discharge his or her duties with respect to the merger.

(2) After approval by the board of directors of each merging trust company, the merger agreement shall be submitted to the director for approval, together with certified copies of the authorizing resolutions of each board of directors showing approval by a majority of the entire board. Within sixty days after receipt by the director of the merger agreement and resolutions, the director shall approve or disapprove of the merger agreement, and if no action is taken, the agreement is deemed approved. The director shall approve the agreement if it appears that the:

(a) Resulting trust company meets the requirements of state law as to the formation of a new trust company;

(b) Agreement provides an adequate capital in relation to the deposit liabilities, if any, of the resulting trust company and its other activities which are to continue or are to be undertaken;

(c) Agreement is fair; and

(d) Merger is not contrary to the public interest.

If the director disapproves an agreement, he or she shall state his or her objections and give an opportunity to the merging trust company to amend the merger agreement to obviate such objections. [2019 c 389 § 97; 2014 c 37 § 390.]

RCW 30B.53.030 Approval by shareholders—Voting—Notice. (1) To be effective, a merger that is to result in a trust company must be approved by the shareholders of each merging trust company by a vote of two-thirds of the outstanding voting shares of each class at a meeting called to consider such action. This vote shall constitute the

adoption of the charter and bylaws of the resulting trust company, including the amendments in the merger agreement.

(2) Unless waived in writing, notice of the meeting of shareholders shall be given by publication in a newspaper of general circulation in the place where the principal office of each merging trust company is located, at least once each week for four successive weeks, and by mail, at least fifteen days before the date of the meeting, to each shareholder of record of each merging trust company at the address on the books of the shareholder's trust company. No notice of publication need be given if written waivers are received from the holders of two-thirds of the outstanding shares of each class of shares. The notice shall state that dissenting shareholders will be entitled to payment of the value of only those shares which are voted against approval of the plan. [2019 c 389 § 98; 2014 c 37 § 391.]

RCW 30B.53.040 Effective date of merger—Certificate of merger.

(1) A merger that is to result in a trust company shall, unless a later date is specified in the agreement, become effective after the filing with and upon the approval of the director of the executed agreement together with copies of the resolutions of the shareholders of each merging trust company approving it, certified by the trust company's president or manager and the secretary. The charters of the merging trust companies, other than the resulting trust company, shall immediately after that automatically terminate.

(2) The director shall immediately after that issue to the resulting trust company a certificate of merger specifying the name of each merging trust company and the name of the resulting trust company. The certificate shall be conclusive evidence of the merger and of the correctness of all proceedings regarding the merger in all courts and places, and may be recorded in any office for the recording of deeds to evidence the new name in which the property of the merging trust companies is held. [2019 c 389 § 99; 2014 c 37 § 392.]

RCW 30B.53.050 Resulting trust company—Property, rights, powers, and duties.

(1) A resulting trust company is the same business and corporate entity as each merging trust company with all property, rights, powers, and duties of each merging trust company, except as affected by state law and by the charter and bylaws of the resulting trust company. A resulting trust company has the right to use the name of any merging trust company whenever it can do any act under such name more conveniently.

(2) Any reference to a merging trust company in any writing, whether executed or taking effect before or after the merger, is a reference to the resulting trust company if not inconsistent with the other provisions of that writing. [2014 c 37 § 393.]

RCW 30B.53.060 Dissenting shareholders—May receive value in cash—Appraisal.

(1) The owner of shares of a trust company that were voted against a merger to result in a trust company shall be entitled to receive their value in cash, if and when the merger becomes effective, upon written demand made to the resulting trust company at any time within thirty days after the effective date of the merger, accompanied by the surrender of the share certificates. The value of

the shares shall be determined, as of the date of the shareholders' meeting approving the merger, by three appraisers, one to be selected by the owners of two-thirds of the dissenting shares, one by the board of directors of the resulting trust company, and the third by the two so chosen. The valuation agreed upon by any two appraisers shall govern. If the appraisal is not completed within ninety days after the merger becomes effective, the director shall cause an appraisal to be made.

(2) The dissenting shareholders shall bear, on a pro rata basis based on number of dissenting shares owned, the cost of their appraisal and one-half of the cost of a third appraisal, and the resulting trust company shall bear the cost of its appraisal and one-half of the cost of the third appraisal. If the director causes an appraisal to be made, the cost of that appraisal shall be borne equally by the dissenting shareholders and the resulting trust company, with the dissenting shareholders sharing their half of the cost on a pro rata basis based on number of dissenting shares owned.

(3) The resulting trust company may fix an amount which it considers to be not more than the fair market value of the shares of a merging trust company at the time of the shareholders' meeting approving the merger, that it will pay dissenting shareholders of the trust company entitled to payment in cash. The amount due under an accepted offer or under the appraisal shall constitute a debt of the resulting trust company. [2019 c 389 § 100; 2014 c 37 § 394.]

RCW 30B.53.070 Valuation of assets—Books of merging trust company. Without approval by the director, no asset shall be carried on the books of the resulting trust company at a valuation higher than that on the books of the merging trust company at the time of its last examination by a state trust examiner before the effective date of the merger or conversion. [2014 c 37 § 395.]

RCW 30B.53.080 Sale of assets. (1) The board of a state trust company, with the director's approval, may cause a state trust company to sell all or substantially all of its assets, including the right to control accounts established with the trust company, without shareholder or participant approval if the director finds:

(a) The interests of the state trust company's clients, depositors, and creditors are jeopardized because of insolvency or imminent insolvency of the state trust company; and

(b) The sale is in the best interest of the state trust company's clients and creditors.

(2) A sale under this section must include an assumption and promise by the buyer to pay or otherwise discharge:

(a) All of the state trust company's liabilities to clients and depositors;

(b) All of the state trust company's liabilities for salaries of the state trust company's employees incurred before the date of the sale;

(c) Obligations incurred by the director arising out of the supervision or sale of the state trust company; and

(d) Fees and assessments due the department.

(3) This section does not limit the incidental power of a state trust company to buy and sell assets in the ordinary course of business.

(4) This section does not affect the director's authority to take action under another law.

(5) The sale by a trust company of all or substantially all of its assets with shareholder or participant approval is considered a voluntary dissolution and liquidation and is governed by the voluntary dissolution and liquidation provisions of chapter 30A.44 RCW. [2014 c 37 § 396.]

**RCW 30B.53.090 Acquisition of control of state trust company—
Notice and application—Registration statement—Violations—Penalties.**

(1) An acquiring person shall not acquire control of a state trust company until thirty days after filing with the director a written notice of and application for change of control containing the following information, plus any additional information that the director may prescribe as necessary or appropriate in the particular instance for the protection of shareholders, trustors, beneficiaries, and the public interest:

(a) The identity and trust and other business experience of each acquiring person by whom or on whose behalf acquisition is to be made, including the identity and experience of:

(i) The officers, managers, and directors of the acquiring person; and

(ii) Any proposed new officers, managers, or directors for the state trust company in the event of a change of control of the state trust company;

(b) The financial and managerial resources and future prospects of each person involved in the acquisition;

(c) The terms and conditions of any proposed acquisition and the manner in which the acquisition is to be made;

(d) The source and amount of the funds or other consideration used or to be used in making the acquisition, and a description of the transaction and the names of the parties if any portion of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition;

(e) Any plan or proposal which any person making the acquisition may have to liquidate the state trust company, to sell its assets, to merge it with another trust institution, or to make any other major change in its business or corporate structure for management;

(f) The identification of any person employed, retained, or to be compensated by the acquiring person, or by any person on its behalf, who makes solicitations or recommendations to shareholders for the purpose of assisting in the acquisition and a brief description of the terms of the employment, retainer, or arrangement for compensation; and

(g) Copies of all invitations for tenders or advertisements making a tender offer to shareholders for the purchase of their shares to be used in connection with the proposed acquisition.

(2) When an entity is required to file an application under this section, the director may require that information required by subsection (1)(a), (b), and (f) of this section be given for each officer, manager, and director of such entity, and each person who is

directly or indirectly the beneficial owner of twenty-five percent or more of the outstanding voting securities of the entity.

(3) If any tender offer, request, or invitation for tenders or other agreements to acquire control is proposed to be made by means of a registration statement under the securities act of 1933, 48 Stat. 74, 15 U.S.C. Sec. 77(a), as amended, or in circumstances requiring the disclosure of similar information under the securities exchange act of 1934, 48 Stat. 881, 15 U.S.C. Sec. 78(a), as amended, the registration statement or application may be filed with the director in lieu of the requirements of this section.

(4) Any acquiring person shall also deliver a copy of any notice and application required by this section to the state trust company proposed to be acquired within two days after the notice and application is filed with the director.

(5) Any acquisition of control in violation of this section shall be ineffective and void.

(6) Any person who willfully or intentionally violates this section or any rule adopted pursuant to this section is guilty of a gross misdemeanor pursuant to chapter 9A.20 RCW. Each day's violation shall be considered a separate violation, and any person shall upon conviction be fined not more than one thousand dollars for each day the violation continues. [2019 c 389 § 94.]

RCW 30B.53.100 Acquisition of control of state trust company—Disapproval by director—Change of officers. (1) The director may disapprove the acquisition of a state trust company within thirty days after the filing of a complete application pursuant to RCW 30B.53.090 or an extended period not exceeding an additional fifteen days if:

(a) The poor financial condition of any acquiring person might jeopardize the financial stability of the state trust company or might prejudice the interests of the state trust company's shareholders or the trustors or beneficiaries of trusts in which the state trust company is a trustee or investment advisor;

(b) The plan or proposal of the acquiring person to liquidate the state trust company, to sell its assets or transfer its fiduciary assets, to merge it with any person, or to make any other major change in its business or corporate structure or management that is not fair and reasonable to the state trust company's shareholders or the trustors or beneficiaries of trusts in which the state trust company is a trustee or investment advisor;

(c) The fiduciary and other business experience and integrity of any acquiring person who would control the operation of the state trust company indicates that approval would not be in the interest of the state trust company's shareholders or the trustors or beneficiaries of trusts in which the state trust company is a trustee or investment advisor;

(d) The information provided by the application is insufficient for the director to make a determination or there has been insufficient time to verify the information provided and conduct an examination of the qualification of the acquiring person; or

(e) The acquisition would not be in the public interest.

(2) An acquisition may be made prior to expiration of the disapproval period if the director issues written notice of intent not to disapprove the action.

(3) The director shall set forth the basis for disapproval of any proposed acquisition in writing and shall provide a copy of such findings and order to the applicants and to the state trust company involved. Such findings and order shall not be disclosed to any other person and shall not be subject to public disclosure under chapter 42.56 RCW unless the findings or order are appealed pursuant to chapter 34.05 RCW.

(4) Whenever such a change of control occurs, each party to the transaction shall report promptly to the director any changes or replacement of its chief executive officer, managers, or any director, which occurs in the following twelve-month period, including in its report a statement of the past and present business and professional affiliations of the new chief executive officer, managers, or directors. [2019 c 389 § 95.]